



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
TECSPEC LLC ET AL.,

:
Plaintiffs,

:
- against -

24-CV-8077 (JHR) (RWL)

:
ORDER

MICHAEL DONNOLO ET AL.,

:
Defendants.

-----X

ROBERT W. LEHRBURGER, United States Magistrate Judge.

The parties are reminded that this case has been referred to the undersigned for general, non-dispositive pretrial matters. (See Dkt. 32.) Accordingly, this order addresses Plaintiff's request to compel Defendants to withdraw the non-party subpoena to be issued to Christina Senia (the "Subpoena"). Federal Rule of Civil Procedure 26(d)(1) is plain: Unless otherwise agreed, ordered, or exempted, "[a] party may not seek discovery from any source before the parties have conferred as required by Rule 26(f)." Defendants assert that the parties held a telephonic Rule 26(f) conference on December 23, 2024, and that the parties "had then-agreed on critical dates" including discovery deadlines. (Dkt. 101 at 3.) However, Rule 26(f)(2) requires the parties to submit their outline of the case plan within 14 days after the conference.¹ If the parties had fulfilled all their obligations for a Rule 26(f) conference, they were under an obligation to submit the

¹ The undersigned's individual rules require that the case plan be filed at least a week in advance of the Rule 16(f) conference, but that does not obviate the requirement to file the plan sooner if required by Rule 26(f)(2).

proposed plan (or competing plans) by January 6, 2025. No such proposed plan has been submitted then or since. The Court therefore infers that the parties have not completed their Rule 26(f) conference obligations.

Defendants suggest they have no obligation to move things forward (see Dkt. 101 at 3 ("Although true that a Rule 16 conference has not yet occurred, this fact cannot be attributed to Defendants"). Rule 26(f)(2), however, expressly places equal responsibility on the parties. Fed. R. Civ. P. 26(f)(2) ("The attorneys of record ... are jointly responsible for arranging the conference, for attempting in good faith to agree on the proposed discovery plan, and for submitting to the court within 14 days after the conference a written report outlining the plan"). Moreover, Defendants have not identified any urgency to the discovery from Ms. Senia that would warrant proceeding on an expedited basis.

Accordingly, Plaintiffs' application at Dkt. 99 is GRANTED. Defendants shall not serve the Subpoena until the parties have filed their Rule 26(f) report with the Court. If the Subpoena has been served prior to issuance of this order, then Defendants shall withdraw the Subpoena without prejudice.

The Court will schedule the Rule 16(f) conference by separate order.

The Clerk of Court is respectfully directed to terminate the letter motion at Dkt. 99.

SO ORDERED.



ROBERT W. LEHRBURGER
UNITED STATES MAGISTRATE JUDGE

Dated: February 26, 2025
New York, New York

Copies transmitted this date to all counsel of record.